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ELECTRONICALLY FILED	
DOC #:	
DATE FILED:	9/28/2022

September 28, 2022

VIA ECF

The Honorable Colleen McMahon
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 24A
New York, New York 10007

Re: ***In re Namenda Indirect Purchaser Antitrust Litigation (SBF Action)***,
Case No. 15-cv-06549-CM-RWL

Dear Judge McMahon:

We write jointly on behalf of Plaintiffs and Defendants in connection with the above-referenced action to provide the Court with an update regarding the parties' efforts to resolve outstanding exhibit-related disputes following the final pre-trial conference held on September 22, 2022. Over the course of the past week, the parties have reached agreement with respect to all exhibit-related disputes. Accordingly, with the exception noted below, there are no objections to the documents remaining on either Plaintiffs' or Defendants' revised exhibit lists, which are attached hereto as Exhibit A and Exhibit B, respectively. The parties thus respectfully request that the Court admit all documents (excluding exhibits DX-0031 and -0047 and those marked reserved) contained in Exhibits A and B to the extent such documents were not previously admitted during the final pre-trial conference.¹ Pursuant to the Court's ruling at the Final Pre-Trial Conference, Plaintiffs will seek the Court's permission to admit the exhibits marked reserved at trial. See EPTC at 41-42. For the Court's convenience, exhibits in Plaintiff's exhibit

MEMO ENDORSED

¹ Please note that Defendants have maintained on their exhibit list exhibits DX-0031 and -0047, which are the DRL Deal Memos that the Court previously excluded in its ruling on Plaintiff's Eleventh Motion *in Limine*, and for which Plaintiff maintains its objections. See ECF No. 890 at 6-9. Recognizing that the Court has previously ruled to exclude these documents, Defendants maintain them on their exhibit list solely for record purposes.

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list which were not previously admitted (and which are not marked reserved) are highlighted in yellow in the attached Exhibit A.²

Moreover, the parties have agreed to include an additional document on the parties' joint exhibit list as JX-127 (FRE 1006-Proposed and Adopted Claim Constructions). The parties' revised joint exhibit list is attached hereto as Exhibit C. As the Court admitted JX-1 through JX-126 during the final pre-trial conference, *see* Final Pretrial Conference Tr. at 59:10-11, the parties respectfully request that the Court admit JX-127 as well.

Separately, pursuant to the Court's guidance during the final pre-trial conference, the parties are conferring with respect to a stipulation to be read to the jury explaining the outcome of the *Markman* rulings in the Namenda patent litigation. *See* Final Pre-Trial Conference Tr. at 65:3-10. While the parties have not yet agreed to the final language for the stipulation, they are endeavoring to reach an agreement by stipulation as the Court's guidance suggested.

Date: September 28, 2022

Respectfully submitted,

/s/ Marvin A. Miller

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² None of Defendants' exhibits have previously been admitted; Defendants thus respectfully request admission of all exhibits in Exhibit B.

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